

1 KAMALA D. HARRIS  
Attorney General of California  
2 FRANK H. PACOE  
Supervising Deputy Attorney General  
State Bar No. 91740  
3 455 Golden Gate Avenue, Suite 11000  
San Francisco, CA 94102-7004  
4 Telephone: (415) 703-5556  
Facsimile: (415) 703-5480  
5 *Attorneys for Complainant*

6 **BEFORE THE**  
7 **BOARD OF REGISTERED NURSING**  
8 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**

9 In the Matter of the Petition to Revoke  
10 Probation Against,

11 **DONNA CAROL HAMBY**  
12 **5509 Nebraska Drive**  
13 **Concord, CA 94521**

14 **Registered Nurse License No. 811187**

Respondent.

Case No. 2011-980

OAH No.

PETITION TO REVOKE PROBATION

15  
16 Complainant alleges:

17 **PARTIES**

18 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Petition to Revoke Probation  
19 solely in her official capacity as the Executive Officer of the Board of Registered Nursing,  
20 Department of Consumer Affairs.

21 2. On or about January 3, 2012, the Board of Registered Nursing issued Registered  
22 Nurse License Number 811187 to Donna Carol Hamby (Respondent). The Registered Nurse  
23 License was in effect at all times relevant to the charges brought herein and will expire on  
24 September 30, 2013, unless renewed.

25 3. In a disciplinary action entitled "In the Matter of Statement of Issues Against Donna  
26 Carol Hamby," Case No. 2011-980, the Board of Registered Nursing, issued a decision, effective  
27 November 2, 2011, in which Respondent's application for a Registered Nurse License was  
28 granted and a license was issued on January 3, 2012 and immediately revoked. However, the

1 revocation was stayed and Respondent's Registered Nurse License was placed on probation for a  
2 period of three (3) years with certain terms and conditions. A copy of that decision is attached as  
3 Exhibit A and is incorporated by reference.

#### 4 JURISDICTION

5 4. This Petition to Revoke Probation is brought before the Board of Registered Nursing  
6 (Board), Department of Consumer Affairs, under the authority of the following laws. All section  
7 references are to the Business and Professions Code unless otherwise indicated.

8 5. Section 2750 of the Business and Professions Code provides, in pertinent part, that  
9 the Board may discipline any licensee, including a licensee holding a temporary or an inactive  
10 license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing  
11 Practice Act.

#### 12 FIRST CAUSE TO REVOKE PROBATION

13 (Failure to Comply With the Board's Program)

14 6. At all times after the effective date of Respondent's probation, Condition Number 2  
15 stated:

16 Comply with the Board's Probation Program. Applicant shall fully comply with the  
17 conditions of the Probation Program established by the Board and shall cooperate with  
18 representatives of the Board in its monitoring and investigation of Applicant's compliance with  
19 the Board's Probation Program. Applicant shall inform the Board in writing within no more than  
20 15 days of any address change and shall at all times maintain an active, current license status with  
21 the Board, including during any period of suspension.

22 Upon successful completion of probation, Applicant's license shall be fully restored.

23 7. Respondent's probation is subject to revocation because she failed to comply with  
24 Probation Condition Number 2, referenced above. The facts and circumstances regarding this  
25 violation are as follows are that respondent failed to fully comply with the terms and conditions  
26 of her probation by failing to comply with Probation Condition Number 16.

27 / / /

28 / / /

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

2

3  
4

5  
6  
7  
8  
9  
10  
11  
12

13  
14  
15  
16

17  
18  
19  
20  
21

22  
23  
24  
25  
26  
27  
28

9. Respondent's probation is subject to revocation because she failed to comply with Probation Condition Number 16, referenced above. The facts and circumstances regarding this violation are that on or about January 1, 2012 through October 17, 2012, respondent failed to submit to random testing in that she failed to call in for random testing on the following dates: January 26, 2012, January 30, 2012, February 18, 2012, March 16, 2012, April 15, 2012, June 23, 2012, June 24, 2012, October 9, 2012 and November 16, 2012.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

1. Revoking the probation that was granted by the Board of Registered Nursing in Case No. 2011-980 and imposing the disciplinary order that was stayed thereby revoking Registered Nurse License No. 811187 issued to Donna Carol Hamby;

2. Revoking or suspending Registered Nurse License No. 811187, issued to Donna Carol Hamby;

3. Taking such other and further action as deemed necessary and proper.

DATED:

December 18, 2012

*Louise R. Bailey*  
LOUISE R. BAILEY, M.ED., RN  
Executive Officer

LOUISE R. BAILEY, M.ED., R.N.  
Executive Officer  
Board of Registered Nursing  
Department of Consumer Affairs  
State of California  
*Complainant*

SF2012403060  
40621063.doc

## **Exhibit A**

**Decision and Order**

**Board of Registered Nursing Case No. 2011-980**

BEFORE THE  
BOARD OF REGISTERED NURSING  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Statement of Issues Against:

**DONNA C. HAMBY**  
**5509 Nebraska Drive**  
**Concord, CA 94521**

Applicant for Registered Nurse License

Respondent

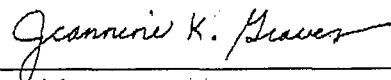
Case No. 2011-980

**DECISION AND ORDER**

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Board of Registered Nursing, Department of Consumer Affairs, as its Decision in the above entitled matter.

This Decision shall become effective on November 2, 2011.

IT IS SO ORDERED October 3, 2011.



\_\_\_\_\_  
President  
Board of Registered Nursing  
Department of Consumer Affairs  
State of California

1 KAMALA D. HARRIS  
Attorney General of California  
2 FRANK H. PACOE  
Supervising Deputy Attorney General  
3 State Bar No. 91740  
4 455 Golden Gate Avenue, Suite 11000  
San Francisco, CA 94102-7004  
Telephone: (415) 703-5556  
5 Facsimile: (415) 703-5480  
*Attorneys for Complainant*

6  
7 **BEFORE THE**  
**BOARD OF REGISTERED NURSING**  
8 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**

9  
10 In the Matter of the Statement of Issues  
Against:

11 **DONNA C. HAMBY**  
12 5509 Nebraska Drive  
Concord, CA 94521

13 Applicant.

Case No. 2011-980

OAH No. 2010080792

**STIPULATED SETTLEMENT AND  
DISCIPLINARY ORDER**

14  
15 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-  
16 entitled proceedings that the following matters are true:

17 PARTIES

18 1. Louise R. Bailey, M.Ed., RN (Complainant) is the Executive Officer of the Board of  
19 Registered Nursing. She brought this action solely in her official capacity and is represented in  
20 this matter by Kamala D. Harris, Attorney General of the State of California, by Frank H. Pacoe,  
21 Supervising Deputy Attorney General.

22 2. Applicant Donna Carol Hamby (Applicant) is representing herself in this proceeding  
23 and has chosen not to exercise her right to be represented by counsel.

24 3. On or about November 1, 2010, Applicant filed an application dated  
25 October 16, 2010, with the Board of Registered Nursing to obtain a Registered Nurse License.

26 / / /

27 / / /

1

2.

## 7

8

11

18

## 20

21

23

26

27

28



- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

9

10

19

22

28

3

14. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

## DISCIPLINARY ORDER

IT IS HEREBY ORDERED that the application of Applicant Donna Carol Hamby for licensure is hereby granted. Upon successful completion of the licensure examination and all other licensing requirements, a license shall be issued to Applicant. Said license shall immediately be revoked, the order of revocation stayed and Applicant placed on probation for a period of three (3) years on the following conditions:

**Severability Clause.** Each condition of probation contained herein is a separate and distinct condition. If any condition of this Order, or any application thereof, is declared unenforceable in whole, in part, or to any extent, the remainder of this Order, and all other applications thereof, shall not be affected. Each condition of this Order shall separately be valid and enforceable to the fullest extent permitted by law.

1. **Obey All Laws.** Applicant shall obey all federal, state and local laws. A full and detailed account of any and all violations of law shall be reported by Applicant to the Board in writing within seventy-two (72) hours of occurrence. To permit monitoring of compliance with this condition, Applicant shall submit completed fingerprint forms and fingerprint fees within 45 days of the effective date of the decision, unless previously submitted as part of the licensure application process.

**Criminal Court Orders:** If Applicant is under criminal court orders, including probation or parole, and the order is violated, this shall be deemed a violation of these probation conditions, and may result in the filing of an accusation and/or petition to revoke probation.

2. **Comply with the Board's Probation Program.** Applicant shall fully comply with the conditions of the Probation Program established by the Board and cooperate with representatives of the Board in its monitoring and investigation of the Applicant's compliance with the Board's Probation Program. Applicant shall inform the Board in writing within no more

1 than 15 days of any address change and shall at all times maintain an active, current license status  
2 with the Board, including during any period of suspension.

3 Upon successful completion of probation, Applicant's license shall be fully restored.

4 3. **Report in Person.** Applicant, during the period of probation, shall appear  
5 in person at interviews/meetings as directed by the Board or its designated representatives.

6 4. **Residency, Practice, or Licensure Outside of State.** Periods of residency  
7 or practice as a registered nurse outside of California shall not apply toward a reduction of this  
8 probation time period. Applicant's probation is tolled, if and when she resides outside of  
9 California. Applicant must provide written notice to the Board within 15 days of any change of  
10 residency or practice outside the state, and within 30 days prior to re-establishing residency or  
11 returning to practice in this state.

12 Applicant shall provide a list of all states and territories where she has ever been licensed as  
13 a registered nurse, vocational nurse, or practical nurse. Applicant shall further provide  
14 information regarding the status of each license and any changes in such license status during the  
15 term of probation. Applicant shall inform the Board if she applies for or obtains a new nursing  
16 license during the term of probation.

17 5. **Submit Written Reports.** Applicant, during the period of probation, shall  
18 submit or cause to be submitted such written reports/declarations and verification of actions under  
19 penalty of perjury, as required by the Board. These reports/declarations shall contain statements  
20 relative to Applicant's compliance with all the conditions of the Board's Probation Program.  
21 Applicant shall immediately execute all release of information forms as may be required by the  
22 Board or its representatives.

23 Applicant shall provide a copy of this Decision to the nursing regulatory agency in every  
24 state and territory in which she has a registered nurse license.

25 6. **Function as a Registered Nurse.** Applicant, during the period of  
26 probation, shall engage in the practice of registered nursing in California for a minimum of 24  
27 hours per week for 6 consecutive months or as determined by the Board.

28 For purposes of compliance with the section, "engage in the practice of registered nursing"

1 may include, when approved by the Board, volunteer work as a registered nurse, or work in any  
2 non-direct patient care position that requires licensure as a registered nurse.

3 The Board may require that advanced practice nurses engage in advanced practice nursing  
4 for a minimum of 24 hours per week for 6 consecutive months or as determined by the Board.

5 If Applicant has not complied with this condition during the probationary term, and  
6 Applicant has presented sufficient documentation of her good faith efforts to comply with this  
7 condition, and if no other conditions have been violated, the Board, in its discretion, may grant an  
8 extension of Applicant's probation period up to one year without further hearing in order to  
9 comply with this condition. During the one year extension, all original conditions of probation  
10 shall apply.

11 **7. Employment Approval and Reporting Requirements.** Applicant shall  
12 obtain prior approval from the Board before commencing or continuing any employment, paid or  
13 voluntary, as a registered nurse. Applicant shall cause to be submitted to the Board all  
14 performance evaluations and other employment related reports as a registered nurse upon request  
15 of the Board.

16 Applicant shall provide a copy of this Decision to her employer and immediate supervisors  
17 prior to commencement of any nursing or other health care related employment.

18 In addition to the above, Applicant shall notify the Board in writing within seventy-two  
19 (72) hours after she obtains any nursing or other health care related employment. Applicant shall  
20 notify the Board in writing within seventy-two (72) hours after she is terminated or separated,  
21 regardless of cause, from any nursing, or other health care related employment with a full  
22 explanation of the circumstances surrounding the termination or separation.

23 **8. Supervision.** Applicant shall obtain prior approval from the Board  
24 regarding Applicant's level of supervision and/or collaboration before commencing or continuing  
25 any employment as a registered nurse, or education and training that includes patient care.

26 Applicant shall practice only under the direct supervision of a registered nurse in good  
27 standing (no current discipline) with the Board of Registered Nursing, unless alternative methods  
28 of supervision and/or collaboration (e.g., with an advanced practice nurse or physician) are

1 approved.

2 Applicant's level of supervision and/or collaboration may include, but is not limited to the  
3 following:

4 (a) Maximum - The individual providing supervision and/or collaboration is present in  
5 the patient care area or in any other work setting at all times.

6 (b) Moderate - The individual providing supervision and/or collaboration is in the patient  
7 care unit or in any other work setting at least half the hours Applicant works.

8 (c) Minimum - The individual providing supervision and/or collaboration has person-to-  
9 person communication with Applicant at least twice during each shift worked.

10 (d) Home Health Care - If Applicant is approved to work in the home health care setting,  
11 the individual providing supervision and/or collaboration shall have person-to-person  
12 communication with Applicant as required by the Board each work day. Applicant shall maintain  
13 telephone or other telecommunication contact with the individual providing supervision and/or  
14 collaboration as required by the Board during each work day. The individual providing  
15 supervision and/or collaboration shall conduct, as required by the Board, periodic, on-site visits to  
16 patients' homes visited by Applicant with or without Applicant present.

17 9. **Employment Limitations.** Applicant shall not work for a nurse's registry,  
18 in any private duty position as a registered nurse, a temporary nurse placement agency, a traveling  
19 nurse, or for an in-house nursing pool.

20 Applicant shall not work for a licensed home health agency as a visiting nurse unless the  
21 registered nursing supervision and other protections for home visits have been approved by the  
22 Board. Applicant shall not work in any other registered nursing occupation where home visits are  
23 required.

24 Applicant shall not work in any health care setting as a supervisor of registered nurses. The  
25 Board may additionally restrict Applicant from supervising licensed vocational nurses and/or  
26 unlicensed assistive personnel on a case-by-case basis.

27 Applicant shall not work as a faculty member in an approved school of nursing or as an  
28 instructor in a Board approved continuing education program.

1 Applicant shall work only on a regularly assigned, identified and predetermined worksite(s)  
2 and shall not work in a float capacity.

3 If Applicant is working or intends to work in excess of 40 hours per week, the Board may  
4 request documentation to determine whether there should be restrictions on the hours of work.

5 10. **Complete a Nursing Course(s).** Applicant, at her own expense, shall  
6 enroll and successfully complete a course(s) relevant to the practice of registered nursing no later  
7 than six months prior to the end of her probationary term.

8 Applicant shall obtain prior approval from the Board before enrolling in the course(s).  
9 Applicant shall submit to the Board the original transcripts or certificates of completion for the  
10 above required course(s). The Board shall return the original documents to Applicant after  
11 photocopying them for its records.

12 11. **Violation of Probation.** If Applicant violates the conditions of her  
13 probation, the Board after giving Applicant notice and an opportunity to be heard, may set aside  
14 the stay order and impose the stayed discipline (revocation/suspension) of Applicant's license.

15 If during the period of probation, an accusation or petition to revoke probation has been  
16 filed against Applicant's license or the Attorney General's Office has been requested to prepare  
17 an accusation or petition to revoke probation against Applicant's license, the probationary period  
18 shall automatically be extended and shall not expire until the accusation or petition has been acted  
19 upon by the Board.

20 12. **License Surrender.** During Applicant's term of probation, if she ceases  
21 practicing due to retirement, health reasons or is otherwise unable to satisfy the conditions of  
22 probation, Applicant may surrender her license to the Board. The Board reserves the right to  
23 evaluate Applicant's request and to exercise its discretion whether to grant the request, or to take  
24 any other action deemed appropriate and reasonable under the circumstances, without further  
25 hearing. Upon formal acceptance of the tendered license and wall certificate, Applicant will no  
26 longer be subject to the conditions of probation.

27 Surrender of Applicant's license shall be considered a disciplinary action and shall become  
28 a part of Applicant's license history with the Board. A registered nurse whose license has been

surrendered may petition the Board for reinstatement no sooner than the following minimum periods from the effective date of the disciplinary decision:

(1) Two years for reinstatement of a license that was surrendered for any reason other than a mental or physical illness; or

(2) One year for a license surrendered for a mental or physical illness.

13. **Physical Examination.** Within 45 days of the effective date of this Decision, Applicant, at her expense, shall have a licensed physician, nurse practitioner, or physician assistant, who is approved by the Board before the assessment is performed, submit an assessment of the Applicant's physical condition and capability to perform the duties of a registered nurse. Such an assessment shall be submitted in a format acceptable to the Board. If medically determined, a recommended treatment program will be instituted and followed by the Applicant with the physician, nurse practitioner, or physician assistant providing written reports to the Board on forms provided by the Board.

If Applicant is determined to be unable to practice safely as a registered nurse, the licensed physician, nurse practitioner, or physician assistant making this determination shall immediately notify the Board and Applicant by telephone, and the Board shall request that the Attorney General's office prepare an accusation or petition to revoke probation. Applicant shall immediately cease practice and shall not resume practice until notified by the Board. During this period of suspension, Applicant shall not engage in any practice for which a license issued by the Board is required until the Board has notified Applicant that a medical determination permits Applicant to resume practice. This period of suspension will not apply to the reduction of this probationary time period.

If Applicant fails to have the above assessment submitted to the Board within the 45-day requirement, Applicant shall immediately cease practice and shall not resume practice until notified by the Board. This period of suspension will not apply to the reduction of this probationary time period. The Board may waive or postpone this suspension only if significant, documented evidence of mitigation is provided. Such evidence must establish good faith efforts by Applicant to obtain the assessment, and a specific date for compliance must be provided. Only

1 one such waiver or extension may be permitted.

2           **14. Participate in Treatment/Rehabilitation Program for Chemical**  
3 **Dependence.** Applicant, at her expense, shall successfully complete during the probationary  
4 period or shall have successfully completed prior to commencement of probation a Board-  
5 approved treatment/rehabilitation program of at least six months duration. As required, reports  
6 shall be submitted by the program on forms provided by the Board. If Applicant has not  
7 completed a Board-approved treatment/rehabilitation program prior to commencement of  
8 probation, Applicant, within 45 days from the effective date of the decision, shall be enrolled in a  
9 program. If a program is not successfully completed within the first nine months of probation,  
10 the Board shall consider Applicant in violation of probation.

11           Based on Board recommendation, each week Applicant shall be required to attend at least  
12 one, but no more than five 12-step recovery meetings or equivalent (e.g., Narcotics Anonymous,  
13 Alcoholics Anonymous, etc.) and a nurse support group as approved and directed by the Board.  
14 If a nurse support group is not available, an additional 12-step meeting or equivalent shall be  
15 added. Applicant shall submit dated and signed documentation confirming such attendance to the  
16 Board during the entire period of probation. Applicant shall continue with the recovery plan  
17 recommended by the treatment/rehabilitation program or a licensed mental health examiner  
18 and/or other ongoing recovery groups.

19           **15. Abstain from Use of Psychotropic (Mood-Altering) Drugs.** Applicant  
20 shall completely abstain from the possession, injection or consumption by any route of all  
21 controlled substances and all psychotropic (mood altering) drugs, including alcohol, except when  
22 the same are ordered by a health care professional legally authorized to do so as part of  
23 documented medical treatment. Applicant shall have sent to the Board, in writing and within  
24 fourteen (14) days, by the prescribing health professional, a report identifying the medication,  
25 dosage, the date the medication was prescribed, the Applicant's prognosis, the date the  
26 medication will no longer be required, and the effect on the recovery plan, if appropriate.

27           Applicant shall identify for the Board a single physician, nurse practitioner or physician  
28 assistant who shall be aware of Applicant's history of substance abuse and will coordinate and



1 monitor any prescriptions for Applicant for dangerous drugs, controlled substances or mood-  
2 altering drugs. The coordinating physician, nurse practitioner, or physician assistant shall report  
3 to the Board on a quarterly basis Applicant's compliance with this condition. If any substances  
4 considered addictive have been prescribed, the report shall identify a program for the time limited  
5 use of any such substances.

6 The Board may require the single coordinating physician, nurse practitioner, or physician  
7 assistant to be a specialist in addictive medicine, or to consult with a specialist in addictive  
8 medicine.

9 16. **Submit to Tests and Samples.** Applicant, at her expense, shall participate  
10 in a random, biological fluid testing or a drug screening program which the Board approves. The  
11 length of time and frequency will be subject to approval by the Board. Applicant is responsible  
12 for keeping the Board informed of Applicant's current telephone number at all times. Applicant  
13 shall also ensure that messages may be left at the telephone number when she is not available and  
14 ensure that reports are submitted directly by the testing agency to the Board, as directed. Any  
15 confirmed positive finding shall be reported immediately to the Board by the program and  
16 Applicant shall be considered in violation of probation.

17 In addition, Applicant, at any time during the period of probation, shall fully cooperate with  
18 the Board or any of its representatives, and shall, when requested, submit to such tests and  
19 samples as the Board or its representatives may require for the detection of alcohol, narcotics,  
20 hypnotics, dangerous drugs, or other controlled substances.

21 If Applicant has a positive drug screen for any substance not legally authorized and not  
22 reported to the coordinating physician, nurse practitioner, or physician assistant, and the Board  
23 files a petition to revoke probation or an accusation, the Board may suspend Applicant from  
24 practice pending the final decision on the petition to revoke probation or the accusation. This  
25 period of suspension will not apply to the reduction of this probationary time period.

26 If Applicant fails to participate in a random, biological fluid testing or drug screening  
27 program within the specified time frame, Applicant shall immediately cease practice and shall not  
28 resume practice until notified by the Board. After taking into account documented evidence of

1 mitigation, if the Board files a petition to revoke probation or an accusation, the Board may  
2 suspend Applicant from practice pending the final decision on the petition to revoke probation or  
3 the accusation. This period of suspension will not apply to the reduction of this probationary time  
4 period.

5           **17. Mental Health Examination.** Applicant shall, within 45 days of the  
6 effective date of this Decision, have a mental health examination including psychological testing  
7 as appropriate to determine her capability to perform the duties of a registered nurse. The  
8 examination will be performed by a psychiatrist, psychologist or other licensed mental health  
9 practitioner approved by the Board. The examining mental health practitioner will submit a  
10 written report of that assessment and recommendations to the Board. All costs are the  
11 responsibility of Applicant. Recommendations for treatment, therapy or counseling made as a  
12 result of the mental health examination will be instituted and followed by Applicant.

13           If Applicant is determined to be unable to practice safely as a registered nurse, the licensed  
14 mental health care practitioner making this determination shall immediately notify the Board and  
15 Applicant by telephone, and the Board shall request that the Attorney General's office prepare an  
16 accusation or petition to revoke probation. Applicant shall immediately cease practice and may  
17 not resume practice until notified by the Board. During this period of suspension, Applicant shall  
18 not engage in any practice for which a license issued by the Board is required, until the Board has  
19 notified Applicant that a mental health determination permits Applicant to resume practice. This  
20 period of suspension will not apply to the reduction of this probationary time period.

21           If Applicant fails to have the above assessment submitted to the Board within the 45-day  
22 requirement, Applicant shall immediately cease practice and shall not resume practice until  
23 notified by the Board. This period of suspension will not apply to the reduction of this  
24 probationary time period. The Board may waive or postpone this suspension only if significant,  
25 documented evidence of mitigation is provided. Such evidence must establish good faith efforts  
26 by Applicant to obtain the assessment, and a specific date for compliance must be provided. Only  
27 one such waiver or extension may be permitted.


28           **18. Therapy or Counseling Program.** Applicant, at her expense, shall

1 participate in an on-going counseling program until such time as the Board releases her from this  
2 requirement and only upon the recommendation of the counselor. Written progress reports from  
3 the counselor will be required at various intervals.

4  
5 ACCEPTANCE

6 I have carefully read the Stipulated Settlement and Disciplinary Order. I understand the  
7 stipulation and the effect it will have on my Registered Nurse License. I enter into this  
8 Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree  
9 to be bound by the Decision and Order of the Board of Registered Nursing.

10  
11 DATED: 7/19/11

  
DONNA CAROL HAMBY  
Applicant

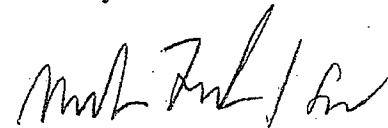
12  
13  
14 ENDORSEMENT

15 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully  
16 submitted for consideration by the Board of Registered Nursing of the Department of Consumer  
17 Affairs.

18  
19 Dated: 7/22/11

Respectfully submitted,

KAMALA D. HARRIS  
Attorney General of California



FRANK H. PACOE  
Supervising Deputy Attorney General  
*Attorneys for Complainant*

20  
21  
22  
23  
24  
25 SF2011200675  
26 20487149.doc  
27  
28

**Exhibit A**

**Statement of Issues No. 2011-980**

1 KAMALA D. HARRIS  
Attorney General of California  
2 FRANK H. PACOE  
Supervising Deputy Attorney General  
3 State Bar No. 91740  
4 455 Golden Gate Avenue, Suite 11000  
San Francisco, CA 94102-7004  
Telephone: (415) 703-5556  
5 Facsimile: (415) 703-5480  
*Attorneys for Complainant*

6  
7 **BEFORE THE**  
**BOARD OF REGISTERED NURSING**  
8 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**

9  
10 In the Matter of the Statement of Issues Against:

Case No. *2011-980*

11 **DONNA C. HAMBY**  
5509 Nebraska Drive  
12 Concord, CA 94521

**STATEMENT OF ISSUES**

13 Applicant.

14  
15 Complainant alleges:

16 PARTIES

17 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Statement of Issues solely in  
18 her official capacity as the Executive Officer of the Board of Registered Nursing, Department of  
19 Consumer Affairs.

20 2. On or about November 1, 2010, the Board of Registered Nursing, Department of  
21 Consumer Affairs received an application for a Registered Nurse License from Donna C. Hamby  
22 (Applicant). On or about October 16, 2010, Donna C. Hamby certified under penalty of perjury  
23 to the truthfulness of all statements, answers, and representations in the application. The Board of  
24 Registered Nursing denied the application on February 18, 2011.

25 JURISDICTION

26 3. This Statement of Issues is brought before the Board of Registered Nursing (Board),  
27 Department of Consumer Affairs, under the authority of the following laws. All section  
28 references are to the Business and Professions Code unless otherwise indicated.

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

2  
3  
4  
5

6

7  
8

9  
10  
11  
12  
13  
14

15  
16

17  
1.8

19  
20  
21

23

24

25

27

28

1       "(f) Conviction of a felony or of any offense substantially related to the qualifications,  
2 functions, and duties of a registered nurse, in which event the record of the conviction shall be  
3 conclusive evidence thereof.

4       . . . .  
5       7.     Section 2762 of the Business and Professions Code, in pertinent part, states:

6       "In addition to other acts constituting unprofessional conduct within the meaning of this  
7 chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this  
8 chapter to do any of the following:

9       . . . .  
10       "(b) Use any controlled substance as defined in Division 10 (commencing with Section  
11 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as defined in  
12 Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to  
13 himself or herself, any other person, or the public or to the extent that such use impairs his or her  
14 ability to conduct with safety to the public the practice authorized by his or her license.

15       "(c) Be convicted of a criminal offense involving the prescription, consumption, or  
16 self-administration of any of the substances described in subdivisions (a) and (b) of this section,  
17 or the possession of, or falsification of a record pertaining to, the substances described in  
18 subdivision (a) of this section, in which event the record of the conviction is conclusive evidence  
19 thereof.

20       8.     Section 1444 of title 16 of the California Code of Regulations provides that a  
21 conviction or act shall be considered to be substantially related to the qualifications, functions or  
22 duties of a registered nurse if to a substantial degree it evidences the present or potential unfitness  
23 of a registered nurse to practice in a manner consistent with the public health, safety or welfare.

24                   FIRST CAUSE FOR DENIAL OF APPLICATION

25                   (Conviction of a Crime)

26       9.     Applicant's application is subject to denial under sections 480(a)(1) and 2761(f) of the  
27 Business and Professions Code in that she was convicted of a crime or act that is substantially

28       / / /

1 related to the qualifications, functions, or and duties of a registered nurse. The circumstances are  
2 as follows:

3 a. On or about March 30, 2010, in a criminal proceeding entitled People of the  
4 State of California v. Donna Carol Hamby in Contra Costa County Superior Court, Case No.  
5 146863-6, the applicant was convicted by her plea of nolo contendere for violating Vehicle Code  
6 section 23152(b) (driving while a 0.08% or higher blood alcohol content) with a special allegation  
7 of having a blood alcohol content over .15%), a misdemeanor.

8 b. The circumstances surrounding this conviction are that on or about December  
9 11, 2009, an off-duty police officer observed a motor vehicle operated by the applicant driving all  
10 over the roadway. The off-duty officer contacted the Concord Police Dispatch via cellular phone.  
11 A Concord Police Officer arrived at the applicant's home address in time to observe applicant  
12 pulling into her driveway. Upon contact with the applicant, the police officer could smell the  
13 odor of an alcoholic beverage coming from applicant's breath and the applicant admitted that she  
14 had consumed alcoholic beverages prior to driving her vehicle. The police officer asked the  
15 applicant to perform a series of field sobriety tests which applicant failed to complete. Thereafter  
16 based on the results of the field sobriety tests and the police officer's personal observations the  
17 applicant was arrested for driving a motor vehicle while under the influence of alcohol or drugs, a  
18 violation of Vehicle Code section 23152(a). After arriving at the county jail, the police officer  
19 administered a Preliminary Alcohol Screening (PAS) test. The breath samples that the applicant  
20 provided for the PAS test reported the presence of ethyl alcohol with readings of 0.197% and  
21 0.214%. The applicant admitted in Contra Costa County Superior Court records that her blood  
22 alcohol content was .20 percent or more.

23 c. On or about March 30, 2010, the applicant was sentenced to 2 days in the  
24 County Jail, placed on summary probation for 3 years, ordered to pay fines and fees in the amount  
25 of \$1,813.00, and ordered to enroll and complete a 9 month Alcohol or Drug Program.

26 / / /

27 / / /

28 / / /



1                                    SECOND CAUSE FOR DENIAL OF APPLICATION

2                                    (Unprofessional Conduct – If Act Committed by Licentiate)

3                    10. Applicant's application is subject to denial under section 480(a)(3) of the Business  
4 and Professions Code in that she committed acts which if done by a licentiate of the business or  
5 profession in question, would be grounds for suspension or revocation of license.

6 The circumstances are as follows:

7                    a. As set forth in paragraph 9 above, the applicant would be subject to disciplinary  
8 action under Business and Professions Code section 2761(a) on the grounds of unprofessional  
9 conduct, as defined by Business and Professions Code section 2762(b), in that on or about  
10 December 11, 2009, she used alcoholic beverages to an extent or in a manner dangerous or  
11 injurious to herself or others.

12                    b. As set forth in paragraph 9 above, the applicant would be subject to disciplinary  
13 action under Business and Professions Code section 2761(a) on the grounds of unprofessional  
14 conduct, as defined by Business and Professions Code section 2762(c), in that on or about March  
15 30, 2010, she was convicted of a crime involving the consumption of alcoholic beverages.

16                                    PRAYER

17                    WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,  
18 and that following the hearing, the Board of Registered Nursing issue a decision:

- 19                    1. Denying the application of Donna C. Hamby for a Registered Nurse License;  
20                    2. Taking such other and further action as deemed necessary and proper.

21 DATED: 06-13-2011

22                    *Louise R. Bailey*  
23 LOUISE R. BAILEY, M.ED., RN  
24 Executive Officer  
25 Board of Registered Nursing  
26 Department of Consumer Affairs  
27 State of California  
28 Complainant

SF2011200675  
20447759.doc